

Appl. No: 10/659,872  
Amdt. Dated June 28, 2005  
Reply to Office Action of March 29, 2005

### REMARKS/ARGUMENTS

Prior to this Amendment, claims 1-20 were pending for consideration in this application.

Independent claim 1 is amended to include the allowable subject matter of claim 7 and intervening claim 6, with claims 6 and 7 being canceled.

Independent claim 9 is amended to clarify that the dam extends below the slab and wall assembly to contact the soil beneath the slab and wall assembly (e.g., on the other side of the created void space), which differs from the components cited in the prior art references. No new matter is added with support found at least in Figure 1.

Independent claim 14 is amended to include the limitations of dependent claim 15, which is canceled. Further language is added to clarify the location and positioning of the well and sump pit to differentiate the claimed foundation from the cited references.

After entry of the Amendment, claims 1-5, 8-14, and 16-20 remain for consideration by the Examiner.

#### Allowable Subject Matter

In the March 29, 2005 Office Action, claims 7 and 13 were objected to as depending from a rejected base claim but were found to be allowable if rewritten in independent form. In response, claim 7 is rewritten in independent form by adding its limitations along with those of intervening dependent claim 6 to base claim 1. Claim 1 and claims 2-5 and 8, which depend from claim 1, are now believed in condition for allowance.

Claim 13 is not presented in independent form with this amendment because its base claim, i.e., claim 9, is believed to be an allowable claim based on the reasons provided below.

#### Claim Rejections Under 35 U.S.C. §102

In the March 29, 2005 Office Action, claims 1 and 6 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 4,907,386 ("Ekroth"). This rejection is traversed based on the following remarks.

Appl. No: 10/659,872  
Amdt. Dated June 28, 2005  
Reply to Office Action of March 29, 2005

Claim 1 is amended to include the limitations of dependent claims 6 and 7, which are canceled. Claim 7 was found by the Examiner to contain allowable subject matter. Hence, claim 1 is believed allowable over Ekroth, and applicant requests that the rejection be withdrawn.

**Claim Rejections Under 35 U.S.C. §103**

Additionally, in the March 29, 2005 Office Action, claims 1-5 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 5,934,036 ("Gallagher") in view of Ekroth. This rejection is traversed based on the following remarks.

Claim 1 is amended to include the limitations of allowable dependent claim 7 and intervening claim 6. Hence, claim 1 is believed allowable over the combination of Gallagher and Ekroth. Claims 2-5 depend from claim 1 and are believed allowable as depending from an allowable base claim.

Further, in the March 29, 2005 Office Action, claim 8 was rejected under 35 U.S.C. §103(a) as being unpatentable over Gallagher in view of U.S. Pat. No. 4,298,294 ("Zimmerman"). This rejection is traversed based on the following remarks. Claim 8 depends from claim 1 which is believed allowable for the reasons provided above. Hence, claim 8 is allowable over Gallagher and Zimmerman as depending from an allowable base claim.

Additionally, in the March 29, 2005 Office Action, claims 9 and 12 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gallagher in view of U.S. Pat. No. 5,615,525 ("Kenworthy"). This rejection is traversed based on the following remarks.

Claim 9 is directed to a foundation that includes a slab and wall assembly and support members vertically supporting the slab and wall assembly so as to create a void space between the assembly and soil beneath the assembly (for example, see void space beneath the slab and wall assembly in Figure 1 of Applicant's specification). A dam is provided that includes planar members (for example, see element 130 of Figure 1) that abut each other and also abut a lower portion of the slab and wall assembly. Interestingly, the planar members also extend downward from the slab and wall assembly so as to abut the soil

Appl. No: 10/659,872  
Amdt. Dated June 28, 2005  
Reply to Office Action of March 29, 2005

beneath the slab and wall assembly, thereby creating a dam against other soil from flowing beneath the slab and wall assembly. Such a dam is not shown by the art of record, and Applicant requests that the rejection of claim 9 be withdrawn.

Specifically, the Office Action notes that Gallagher fails to teach a dam (although it mentions a water dam where the claim is directed more to blocking expansive soil from going into the void space beneath the slab and wall assembly). To overcome this deficiency, the Office Action cites Kenworthy as showing the planar members of claim 9 at element 30 in Figure 23 and element 10 in Figure 1. However, as can be seen in Figure 3, element 30 is a foam board that is positioned to abut the outer surface 32 of the wall 34. The foam board has channels shown in Figure 2 to direct water away from the wall 34. However, the board 30 does not extend beyond the wall 34 let alone the foundation member 36. Hence, the board 30 does not teach the dam of claim 9 which includes planar members that abut soil beneath the slab and wall assembly (i.e., on the other side of the void space) while also abutting a lower portion of the slab and wall assembly. Claim 9 is not shown or even suggested by the combined teachings of Gallagher and Kenworthy, and hence, these references do not support a rejection of claim 9 based on obviousness. Claim 12 depends from claim 9 and is believed allowable at least for the reasons for allowing claim 9.

Yet further, in the March 29, 2005 Office Action, claims 10 and 11 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gallagher and Kenworthy as applied to claim 9 further in view of Ekroth. This rejection is traversed based on the following remarks. Claim 10 and 11 depend from claim 9, and as a result, are believed allowable as depending from an allowable base claim. Further, Ekroth does not overcome the deficiencies noted with reference to claim 9 in Gallagher and Kenworthy as it does not show a dam formed from planar members extending downward from a slab and wall assembly to contact soil beneath a void space formed under such an assembly.

Appl. No: 10/659,872  
Amdt. Dated June 28, 2005  
Reply to Office Action of March 29, 2005

Additionally, in the March 29, 2005 Office Action, claims 14-16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gallagher in view of Kenworthy further in view of Zimmerman. This rejection is traversed based on the following remarks.

Claim 14 is directed to a foundation with a slab and wall assembly and a plurality of support member supporting this assembly so as to create a void under the assembly. A sump pit is positioned adjacent the slab and wall assembly and a well is provided with walls defining a hole in the soil immediately adjacent the slab and wall assembly over the sump pit so as to expose a portion of the assembly and to provide access to the sump pit.

The Office Action notes that Gallagher fails to teach the sump pit feature of the claim 14 invention. Kenworthy is cited for teaching a sump pit with element 40 of Figure 3 that is "adjacent the slab and wall assembly exterior to the periphery of the wall." Applicant disagrees. Claim 14 requires that the sump pit be "adjacent" the slab and wall assembly and also requires that a well be provided with a hole in the soil immediately adjacent the slab and wall assembly, with the hole exposing a portion of the slab and wall assembly and providing access to the sump pit. Element 40 of Figure 3 in Kenworthy is a drain tile that does not teach a well immediately adjacent a slab and wall assembly that exposes a portion of the assembly and provides access to a sump pit. Zimmerman is also cited at element 34 in Figure 2 for its teaching. However, Zimmerman shows piping water from a basement over a distance to a pump 28 in a well or pit 22 that is not immediately adjacent the slab and wall assembly of the structure. Hence, the combined teachings of these references fails to teach or suggest the foundation of claim 14, and claims 14 and 15-16, which depend from claim 14, are believed to be non-obvious in light of these three references.

Finally, in the March 29, 2005 Office Action, claims 17-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gallagher in view of Kenworthy, Zimmerman, and Ekroth. This rejection is traversed based on the following remarks. Claims 17-20 depend from claim 14 and are believed allowable over Gallagher, Kenworthy, and Zimmerman for the reasons provided

Appl. No: 10/659,872  
Amdt. Dated June 28, 2005  
Reply to Office Action of March 29, 2005

above for allowing claim 14. Further, Ekroth does not teach a foundation with a sum pit adjacent the slab and wall assembly or the inclusion of a well immediately adjacent the slab and wall assembly. For these reasons, claims 17-20 are believed in condition for allowance.

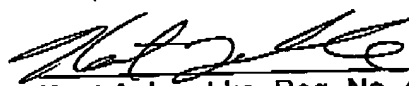
### Conclusions

Based on the above remarks, Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

No fee is believed due with this Amendment, but any fee deficiency associated with this submittal may be charged to Deposit Account No. 50-1123.

Respectfully submitted,

June 28, 2005



Kent A. Lembke, Reg. No. 44,866  
Hogan & Hartson LLP  
One Tabor Center  
1200 17th Street, Suite 1500  
Denver, Colorado 80202  
(720) 406-5378 Tel  
(720) 406-5301 Fax